



DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

September 20, 2019

In Reply Refer To: 001B
FOIA Request: 19-08160-F

Jasper Craven
MuckRock News
DEPT MR 74660
411A Highland Avenue
Somerville, MA 02144-2516
74660-32535423@requests.muckrock.com

Dear Mr. Craven:

This is the second interim Initial Agency Decision (IAD) to your June 3, 2019, Freedom of Information Act (FOIA) request to the U.S. Department of Veterans Affairs (VA) FOIA Service. You requested a copy of "All partnership details – including copies of draft and final contracts and email communication between agency and private sector stakeholders for the recently inked partnerships with Janssen Pharmaceuticals/Johnson + Johnson for Spravato (detailed here:<https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5220>) Records searched should be between Jan. 1, 2010 and present day. E-mail key words include: "MOU," "side effects," "spravato," "Wilkie," "Trump," "FDA." That same day, June 3, 2019, you modified the timeframe of your request to January 1, 2019 and present day.

On June 11, 2019, the VA FOIA Service acknowledged receipt of your request and advised that your request fell under the cognizance of the Veterans health Administration (VHA). Your request was referred to and received by the VHA on June 11, 2019.

On June 21, 2019, the VHA acknowledged receipt of your request and advised that your request falls under the cognizance of the VA Office of the Secretary (OSVA). Your request was referred to and received by the OSVA on June 21, 2019. Please accept this as the OSVA's acknowledgment of receipt of your FOIA request and first interim IAD.

On July 12, 2019, we searched the VA Secretary's Center for Strategic Partnerships for "All partnership details regarding Spravato for the time frame of January 1, 2019 thru present date."

On July 18, 2019, we released to you 852 pages in their entirety and 27 pages were partially released pursuant to Title 5 U.S.C. § (b)(6), FOIA Exemption 6.

On August 23, 2019, we conducted a search of the mailboxes of Jake Leinenkugel, Peter O'Rourke, Darin Selnick, Jim Byrne, Robert Wilkie, Pamela Powers, and Deborah Scher for records responsive to your request. The timeframe for the search was January 1, 2019 through August 13, 2019 the date in which the Office of Information and Technology (OIT) provided us with the mailboxes. The search terms applied to our search consisted of MOU, side effects, Spravato, Wilkie, Trump, and FDA.

Please know, the timeframe for the mailbox pertaining to Deborah Scher only covers April 21, 2019 through August 13, 2019; as such, on September 13, 2019, we requested OIT provide us

with her mailbox for the timeframe of January 1, 2019 through April 20, 2019. Once we receive her mailbox we will conduct another search and provide you with additional records, if any.

Our search located 355 pages of responsive records. Of those pages, I determined that 185 pages are releasable in their entirety and 83 pages are partially releasable pursuant to Title 5 U.S.C. § (b)(6), FOIA Exemption 6.

FOIA Exemption 6 exempts from disclosure of personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test. Specifically, the information being withheld, as indicated on the enclosed documents, under FOIA Exemption 6, consists of names; we however release the names and VA email addresses of VA Senior Executives. Federal civilian employees and private citizens retain a significant privacy interest under certain circumstances, such as in instances where the release of their information could represent a threat to their well-being, harassment, or their ability to function within their sphere of employment. The federal civilian employees and private citizens whose information is at issue have a substantial privacy interest in their personal information. In weighing the private versus the public interest, except names and VA email addresses of VA Senior Executives, we find that there is no public interest in knowing the names, identities, email addresses, VA usernames, phone numbers, cellular numbers, and facsimile numbers of federal civilian employees and private citizens. The coverage of FOIA Exemption 6 is absolute unless the FOIA requester can demonstrate a countervailing public interest in the requested information by demonstrating that the individual is in a position to provide the requested information to members of the general public and that the information requested contributes significantly to the public's understanding of the activities of the Federal government. Additionally, the requester must demonstrate how the public's need to understand the information significantly outweighs the privacy interest of the person to whom the information pertains. Upon consideration of the records, I have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest of the individuals whose names are redacted. The protected information has been redacted and (b)(6) inserted. "Withholding a telephone number or e-mail address, alone, is not sufficient to protect that [privacy] interest; alternate means of contacting and harassing these employees would be readily discoverable on the Internet if this court ordered their names disclosed." Long v. Immigration & Customs Enf't, 2017 U.S. Dist. LEXIS 160719 (D.C. Cir. 2017).

The remaining 84 pages, Bates numbered 000965-000973, 001162-001190, and 001196-001234, contain business or financial information specific to Johnson & Johnson or Janssen Pharmaceuticals. Per Executive Order 12,600 and 38 C.F.R. § 1.558, we must notify the submitter of this FOIA request and afford them the opportunity to make recommendations on information that may be withheld under FOIA Exemption 4. If we overrule submitter objections, E.O. 12,600 and 38 C.F.R. § 1.558 require us to give them two weeks to enjoin our release in federal district court. Thus, there will be a delay in releasing these pages.

FOIA Mediation

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and

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Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. Under the provisions of the FOIA Improvement Act of 2016, the following contact information is provided to assist FOIA requesters in resolving disputes:

VA Central Office FOIA Public Liaison:

Name: Doloras Johnson
Email Address: vacofoiaservice@va.gov

Office of Government Information Services (OGIS)

Email Address: ogis@nara.gov
Fax: 202-741-5769
Mailing address:
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

FOIA Appeal

Please be advised that should you desire to do so, you may appeal the determination made in this response to:

Office of General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

If you should choose to file an appeal, please include a copy of this letter with your written appeal and clearly indicate the basis for your disagreement with the determination set forth in this response. Please be advised that in accordance with VA's implementing FOIA regulations at 38 C.F.R. § 1.559, your appeal must be postmarked no later than ninety (90) days of the date of this letter.

Sincerely,

Ruthann Parise
OSVA FOIA Officer

Enclosure: 268 pages redacted